

## Staff Summary Report

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**Council Meeting Date:** 6/5/08

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** This is a public hearing to recommend the approval of a Series 6 Bar Liquor License for Idaho Business Holdings LLC dba Elite, 910 North McClintock Drive.

**DOCUMENT NAME:** 20080605LIQ06 **LIQ LIC (0210-02)**

**SUPPORTING DOCS:** NO

**COMMENTS:** H J Lewkowitz is the Agent for this application.

**PREPARED BY:** Kay Savard, Specialty License Coordinator (x8650)

**REVIEWED BY:** Jerry Hart, Financial Services Manager (x8505)  
Bruce L. Smith, License & Collection Supervisor (x8509)

**LEGAL REVIEW BY:** N/A

**FISCAL NOTE:** N/A

**RECOMMENDATION:** Staff recommends that Council approve this application because the applicant and location have met all city and county licensing criteria.

**ADDITIONAL INFO:** This application is a person to person transfer of a Series 6 bar liquor license from Charles Helquist, Agent to H. J. Lewkowitz, Agent

This location has been approved by staff to operate as an adult-oriented business which allows for the following activities: adult arcade, adult retail store, adult motion picture theater, adult theater, adult cabaret, adult motel, nude model studio, adult service, adult service business and adult video facility. A letter of protest from the Maricopa County Attorney is attached.

Tempe city code requires that the Tempe Police Department conduct a background investigation on all liquor license applicants. Additionally, the city code requires that business locations be inspected by Fire Prevention, Building Safety and the County Health Department to ensure the establishment meets minimum city and county code licensing criteria. The Development Services Department has determined that a use permit is currently not required. The premise has been posted for a 20-day period, per Arizona Revised Statute.

State statute requires municipalities to make one of three recommendations to the Arizona Department of Liquor Licenses and Control (AZ DOL):

1. Approval
2. Denial (this results in a public hearing set by the AZ DOL)
3. No recommendation (this results in a public hearing set by the AZ DOL)



## Maricopa County Attorney

ANDREW P. THOMAS

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PHOENIX, AZ 85003  
www.maricopacountyattorney.org

RECEIVED

MAY 15 2008

TEMPE CITY ATTORNEY

PH. (602) 506-3411  
TDD (602) 506-4352  
FAX (602) 506-8102

May 15, 2008

Mr. Andrew Ching, Esq.  
Tempe City Attorney  
PO Box 5002  
Tempe, AZ 85280-5002

Re: Liquor license application of H.J. Lewkowitz for property at 910 N. McClintock, Tempe

Dear Mr. Ching:

The building located on the property at 910 N. McClintock Drive in Tempe has a notice on it that an H.J. Lewkowitz has applied for a liquor license for that location. The notice indicates that the business to be opened at that location is Elite Cabaret, which the owners of that property have said they intend to operate as a topless bar. It appears from the liquor license application that Elite Cabaret is planning on opening for business in the near future. In order to prevent a potential violation of the law by the opening of an adult oriented business within one-fourth of a mile of a public recreational facility, we are sending you our third letter concerning this property.

As this office has stated in previous correspondence with you, it is our position that operating a topless bar at this location appears to violate Arizona Revised Statutes § 13-1422, which prohibits adult oriented businesses from being located within one-fourth of a mile of a public recreational facility. (Correspondence attached).

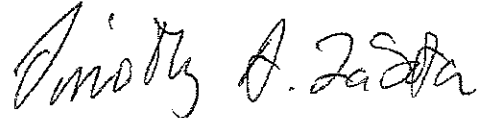
Pursuant to state law, the City of Tempe will make a recommendation to the State Liquor Board as to whether this establishment is a suitable candidate for a liquor license.

In light of our position on the legality of Elite Cabaret locating at 910 North McClintock as a topless bar, it also our position that a liquor license should not be granted, nor recommended to be granted by the City of Tempe, to an establishment that the owners intend to operate in a manner that is violative of state law.

May 15, 2008

I would ask that you extend us the courtesy of ensuring that this letter is included in those materials that the City of Tempe considers in deciding whether to recommend that a liquor license be granted or denied at this location.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy A. La Sota". The signature is fluid and cursive, with the first name "Timothy" being more prominent.

Timothy A. La Sota  
Special Assistant County Attorney

cc: Mr. John Weston, Esq.  
Mr. G. Randall Garrou, Esq.  
Mr. Jerry Oliver Sr., Director, Arizona Department of Liquor License and Control

Enclosure



COPY

## Maricopa County Attorney

ANDREW P. THOMAS

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September 25, 2007

Mr. Andrew Ching, Esq.  
Tempe City Attorney  
PO Box 5002  
Tempe, AZ 85280-5002

Re: Your letter of September 14, 2007 regarding A.R.S. § 13-1422

Dear Mr. Ching:

Thank you for your letter of September 14, 2007.

In your letter you raise a number of matters. The first is whether this office has taken independent measurements of the area to determine what uses might be within one-quarter mile of the proposed topless bar Elite Cabaret. This office has taken no independent measurements and has relied on media reports. However, since the City of Tempe initially denied the permit (hence the lawsuit), I would assume that the City of Tempe took measurements to determine the distance between the proposed Elite Cabaret and Indian Bend Wash. If so, I hope that Tempe can provide them to this office, though ultimately this office would verify them independently.

Secondly, you contend that Indian Bend Wash "was never considered or designated as one of the many traditional 'parks' within Tempe." This is contrary to the position Tempe initially took when it denied a permit to Idaho Business Holdings to open Elite Cabaret. But more importantly, a visit to Indian Bend Wash reveals that it is indeed a city park and a public recreational facility under the statute. City of Tempe signs at Indian Bend Wash near Curry and Miller Roads in Tempe state that "This is a public park." (See enclosure). "Park Hours" and "Park Regulations" are also listed on City of Tempe signs. (See enclosure). In addition, a public parking area is provided, and there is a ramada and concrete pathways for pedestrians and cyclists with maps and interpretive signs. (See enclosure).

In addition, on the north side of Curry there is a golf course that is open to the public, along with a throughway that cyclists or pedestrians can use to travel for long, uninterrupted stretches while enjoying the "green belt" that runs for miles through Tempe and Scottsdale. (See enclosure). These also appear to be within a quarter-mile of the property on which Elite Cabaret would be located.

September 25, 2007

Based on the foregoing, this office has little difficulty in concluding that Indian Bend Wash and the surrounding area discussed above indeed meets the definition of "public recreational facility" under the statute.

As another reason for the settlement, you cite the threat of possible liability on behalf of the City of Tempe because Tempe waited too long to act on Idaho Business Holdings' adult oriented business application, thereby costing Idaho Business Holdings the ability to open Elite Cabaret and turn profits. Even if Tempe is liable for damages, because of our duties under the statute it is irrelevant. The statute provides criminal penalties and civil remedies in the event that an adult oriented business locates within a quarter mile of a public recreation facility, with no relevant exceptions. This office is charged with enforcing the law, and a bureaucratic mistake is no excuse for violating a state law.

You also contend that under the statute, Tempe may have less restrictive regulations regarding where adult oriented businesses may locate than that which is prescribed by the statute. Your reading of the statute would turn subsection A, which regulates the locations of adult oriented businesses, into a nullity because cities could easily get around the law by passing weak ordinances that did not have any real regulatory effect on where an adult oriented business could locate, defeating the Legislature's intent. As you know, courts do not favor statutory interpretations that turn legislative language into mere surplusage, and your reading would turn the entire legislative enactment into surplusage.

We think it is clear that the statute was intended to apply a minimum standard as to adult oriented business' operating hours and locations that would not preempt tougher standards that municipalities might choose to enact. The goal of the Legislature was not to allow municipalities to have their own weaker regulations on the locations of adult oriented businesses.

As for your claim that Judge Martone was without jurisdiction when he issued his order, we find it hard to believe that a federal judge as seasoned as him would have the "misunderstanding" alleged in the letter. Rather, it is clear that the parties' attempt to have the statute declared unconstitutional through a sealed settlement order shocked the conscience of the court and he felt compelled to issue his unusually pointed order. The notion that public officials should remain silent while a city government attempts to invalidate or at least undermine a state law passed by the people's elected representatives is contrary to principles of open government.

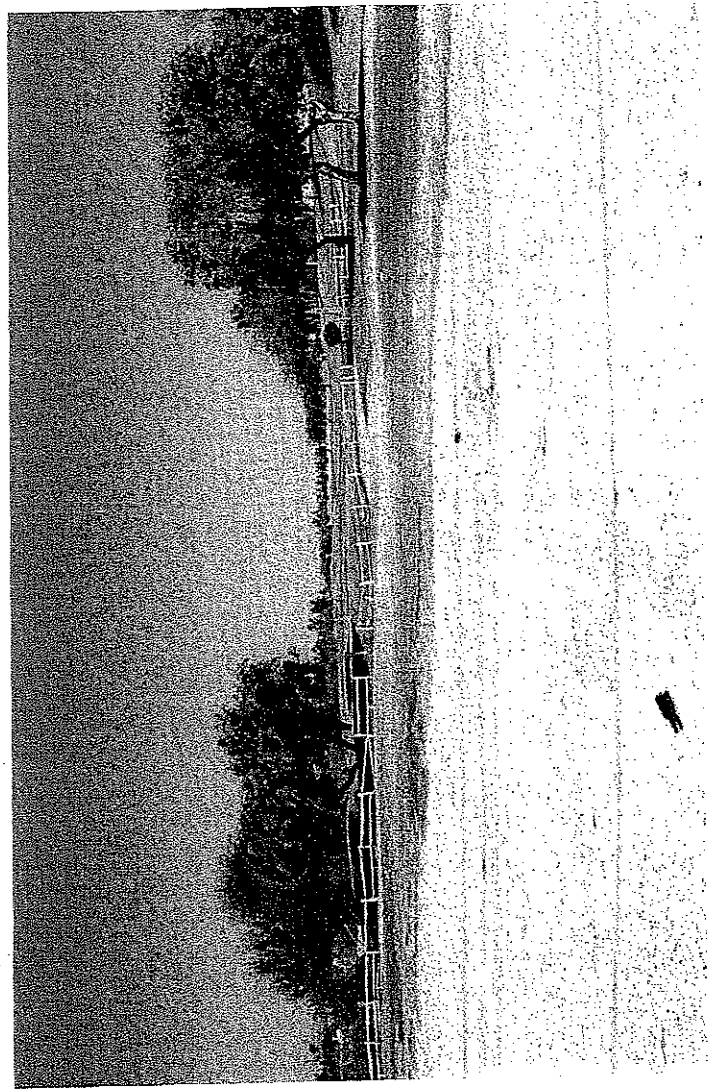
Again, thank you for your letter, but this office's position on this matter is unchanged.

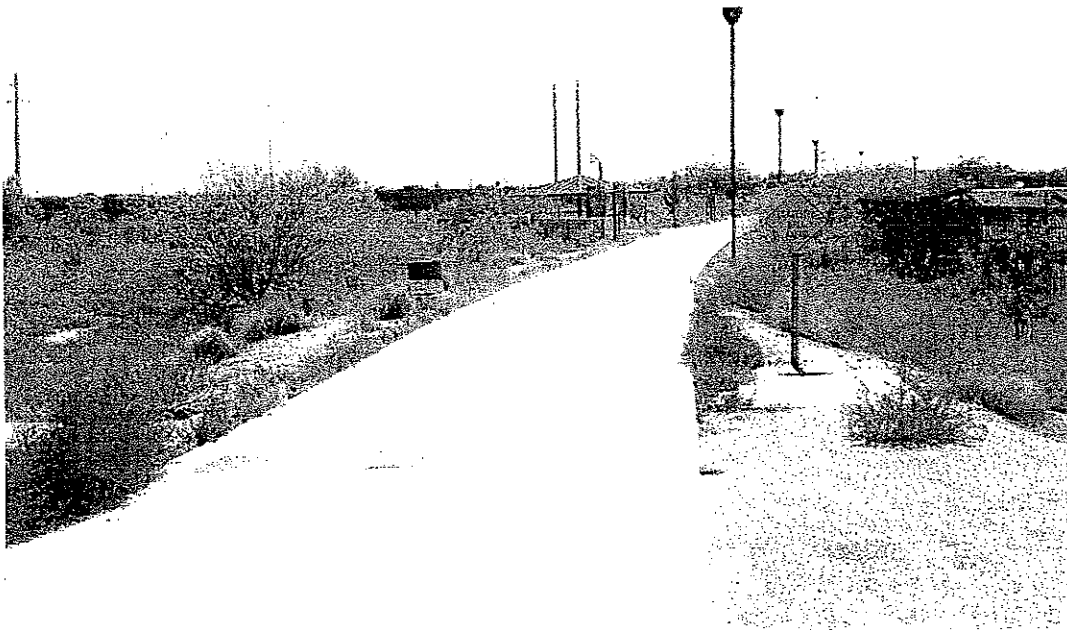
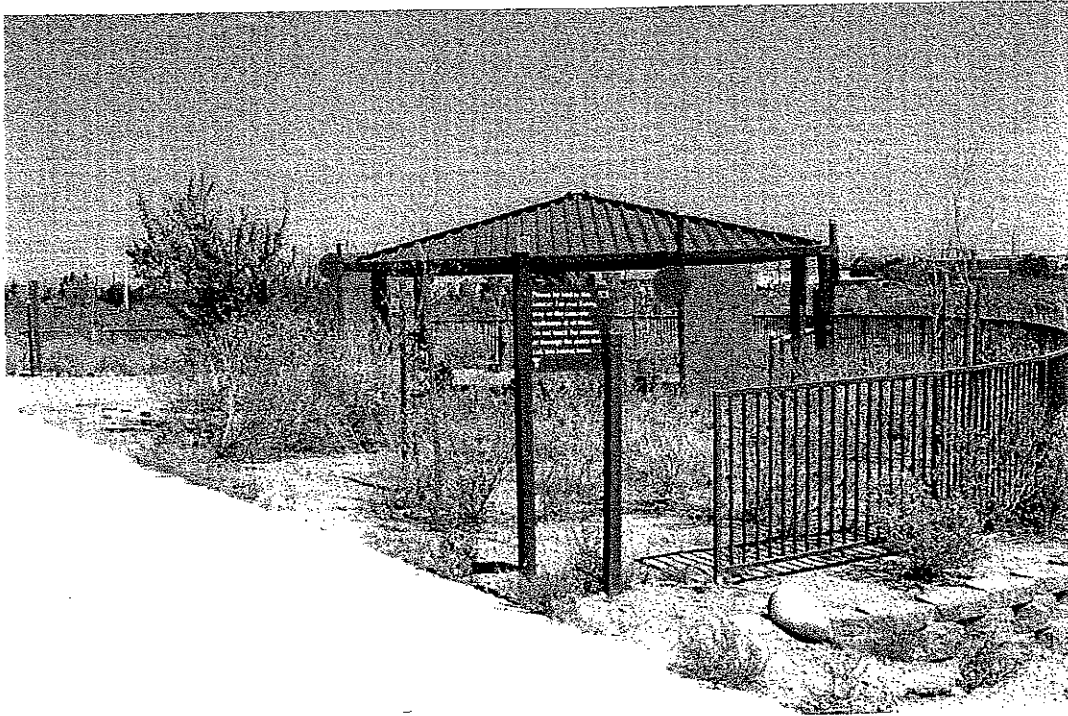
Sincerely,

  
Timothy A. La Sota  
Special Assistant County Attorney

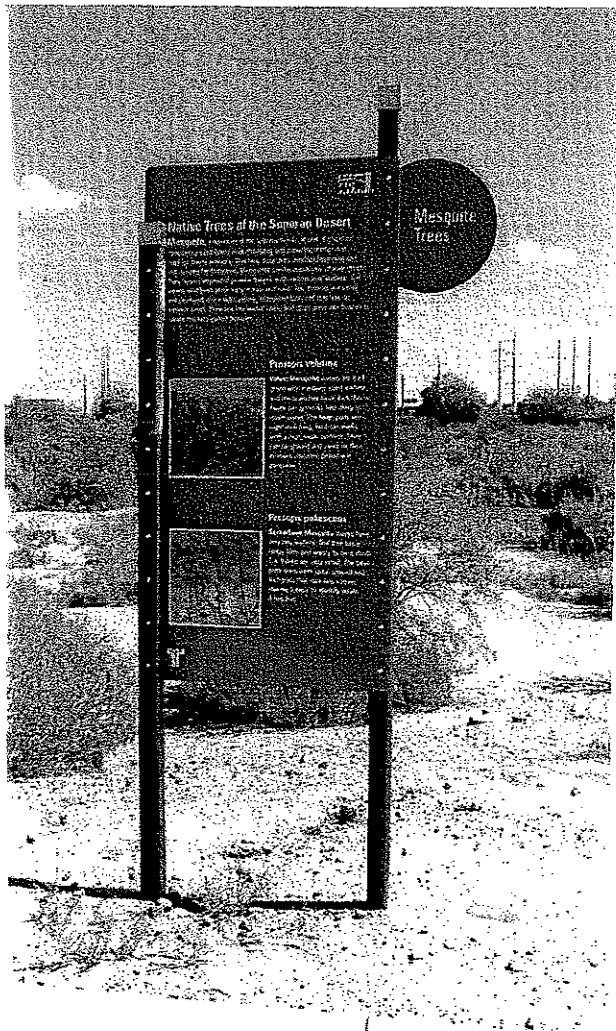
cc: Mr. John Weston, Esq.  
Mr. G. Randall Garrou, Esq.

Enclosure

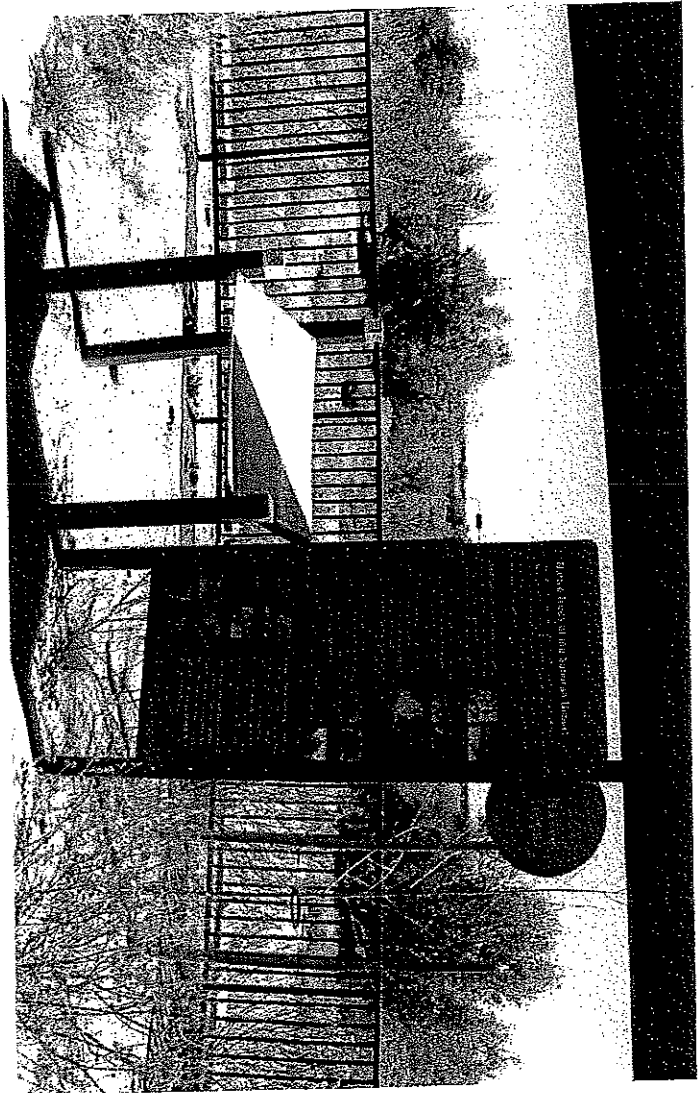
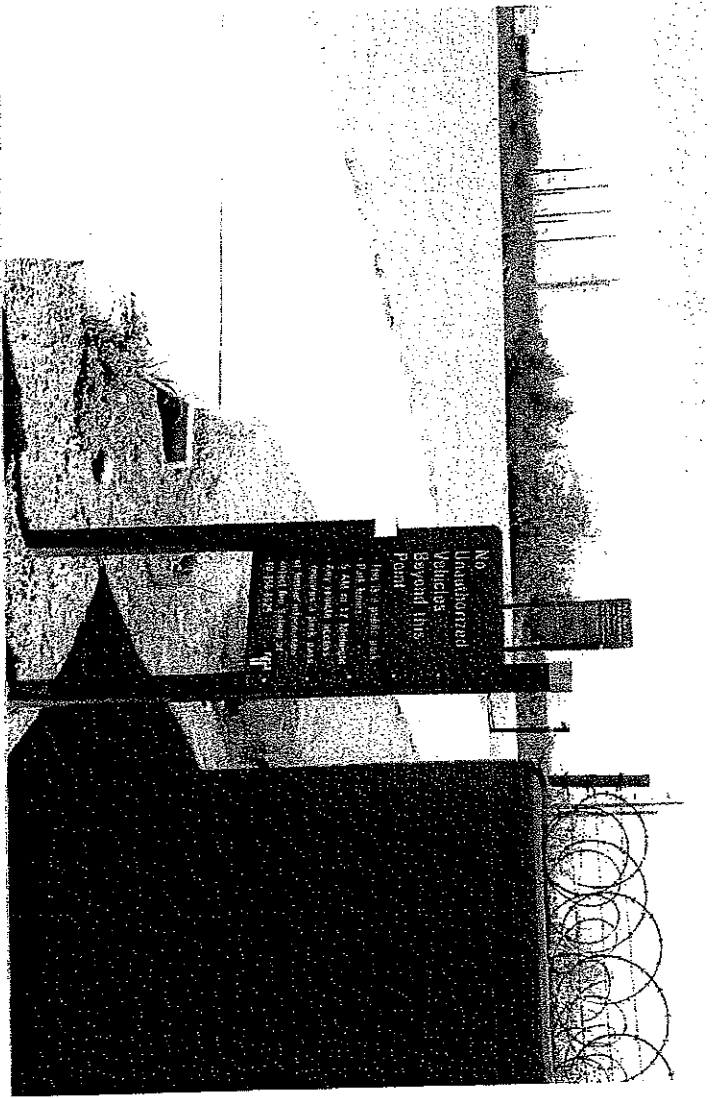
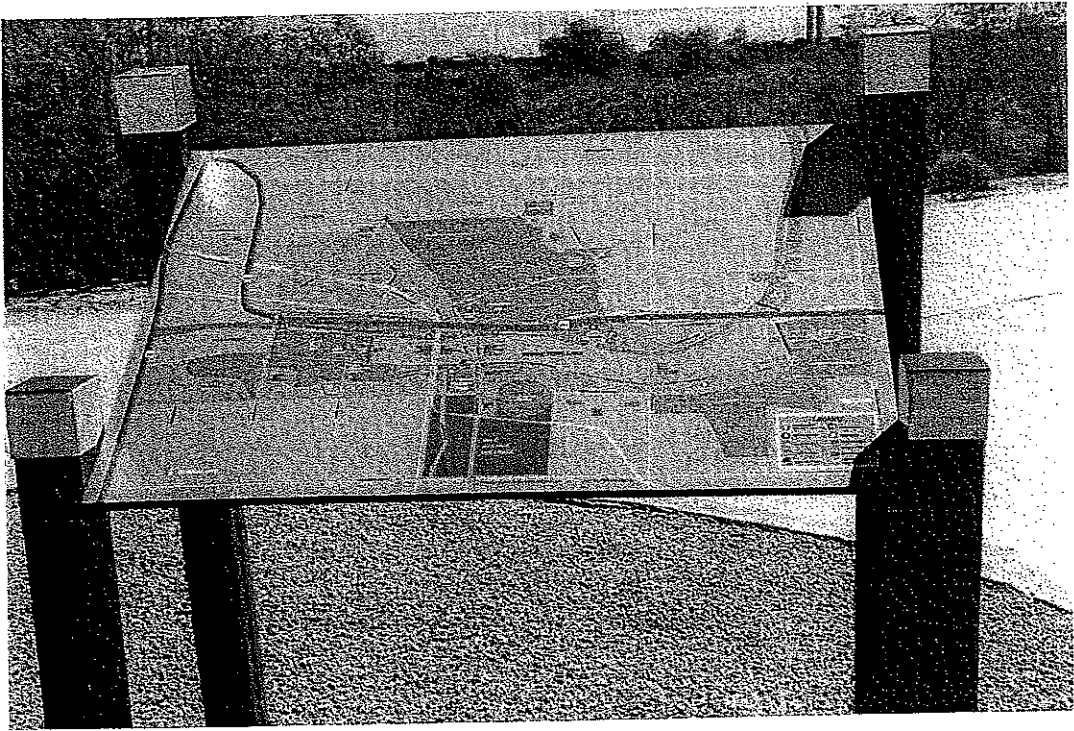














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**The Tempe Way**    *Our Mission* To make Tempe the best place to live, work and play.    *We Value* People... Integrity... Respect... Openness... Creativity... Quality...

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City Attorney's Office

September 14, 2007

**VIA FACSIMILE AND REGULAR MAIL**

Timothy A. La Sota, Esq.  
Special Assistant County Attorney  
Maricopa County Attorney's Office  
301 W. Jefferson, Suite 800  
Phoenix, AZ 85003

Re:    Restrictions in A.R.S. § 13-1422 on Locations of Adult Oriented Businesses

Dear Mr. La Sota:

I received your letter dated August 29, 2007, which was addressed to counsel for Idaho Business Holdings, LLC ("IBH") and me concerning the distance restrictions for adult oriented businesses contained in A.R.S. § 13-1422. I appreciate you taking the time to return my call to you this past Wednesday to discuss some of my concerns with your office's interpretation of A.R.S. § 13-1422. Since I have not heard back from you since then, I write in an effort to clear up what appear to be factual and legal misunderstandings you may have about the litigation and its settlement between the City of Tempe and IBH, at least as they related to A.R.S. § 13-1422.

The first I learned of your office's interest in the litigation and settlement was when I received a faxed copy of your letter on August 29, which was apparently sent on or about the same time you faxed the same letter to the Mayor and City Council of Tempe. Because of the gravity of the contents of your letter, especially its purported purpose as a "courtesy notice" to me and the elected officials of Tempe, I am surprised you did not choose first to have called me or made some other attempt to contact me before sending your letter.

If such a true courtesy contact had been made, I am confident I would have been able to provide you with information about the basis for the City's actions in more detail than the news accounts your letter referenced. More important, we would have been able to discuss the legal issues that arise under A.R.S. § 13-1422, including the issue about whether the statute's new provisions apply to Tempe at all. Nonetheless, I am hopeful that this letter will mark the beginning of a better dialogue between our respective offices for this and any other matters in the future.

Your letter asserts that A.R.S. § 13-1422, as state law, prohibits adult oriented businesses from operating within one-quarter mile of a public recreational facility, and that the location of Elite Cabaret, the adult oriented business that IBH seeks to open within the City of Tempe, "apparently falls" within a quarter-mile of a public recreational facility. While one of the articles you referenced mentions Indian Bend Wash, it is not clear from your letter if this is the "public recreational facility" you were referring to or if your office had in fact made independent measurements of the area and identified other "public recreational facilities" that give your office concern. I mention this issue here to bring to your attention an example of the many legal questions that seem unanswered by the revisions made to A.R.S. § 13-1422. The term "public recreational facilities" is not defined in A.R.S. § 13-1422 and the Indian Bend Wash, while a riparian area of which the City of Tempe is very proud, was never considered or designated as one of the many traditional "parks" within Tempe. If your office has made any independent measurements of the distance from the proposed business location to "public recreational facilities" and sites other than the Indian Bend Wash riparian area, we would be grateful to receive them. Further, we would be grateful to receive any definitional guidance you may have about whether the Indian Bend Wash riparian area falls within the definition of "public recreational facilities" contained in A.R.S. § 13-1422.

As the preceding paragraphs should suggest, and without getting into copious detail, the settlement of the lawsuit was based on several considerations as enumerated in the settlement agreement. Chief among them was the fact that IBH had submitted a complete application for its business location on or about November 2005. At the time of the submittal, like many municipalities in the State, Tempe had an existing distance requirement specified in the Tempe Zoning and Development Code (ZDC). That requirement set the separation distance from defined sensitive uses at 1000 feet. At the time IBH submitted its application, the proposed Cabaret was not within 1000 feet of any of the sensitive uses specified in the ZDC.

The provisions of A.R.S. § 13-1422 on which your letter relies were not added by amendment until April 2006. That amendment purported to impose a distance separation requirement of a quarter-mile (1320 feet). It is true that Tempe did not process IBH's application until after A.R.S. § 13-1422 was amended to include the quarter-mile distance requirement contained in Subsection (A) of A.R.S. § 13-1422. It is also true that IBH's application had been pending since November, 2005. The plaintiffs asserted that Tempe delayed the processing of the Cabaret's application in bad faith until the statutory amendment was made and then used the change in state law as a basis for denial of the application. In other words, the plaintiffs claimed Tempe changed the rules of the game during the game.

While I note that no "ill" motives properly may be ascribed to Tempe's actions, one does not need to attribute bad motives to these facts to acknowledge that Tempe must concede that the delay did occur. Thus, the decision to settle was not, and could not be deemed to be, in violation of A.R.S. § 13-1422. Rather, the decision was an acknowledgement that the original application should have been processed and approved according to the regulations in effect at the time the application was first made, prior to the change in state law. This was a result that likely would have occurred after time-consuming and expensive litigation that exposed Tempe to a claim for damages to IBH that would likely have exceeded five million dollars, an amount confirmed in several recent court decisions. It was the actions of Tempe, again regardless of motive, that delayed the approval, which would have otherwise occurred prior to the amendments to A.R.S. § 13-1422. In short, whatever the hope of the legislative proponents of the amendment to A.R.S. § 13-1422 may have been to affect this cabaret's ability to open, if any, the actions were too late to apply to this specific case.

You might also review carefully the provisions of A.R.S. § 13-1422 to determine, as we believe we have regardless of a legislative or expression by other elected officials' desires, that the statute's reach does not even extend to Tempe or any other municipality that has its own distance regulation of adult oriented businesses. Part of the 2006 amendment of A.R.S. § 13-1422 was the addition of a new subsection C, which states as follows:

Subsection A of this section does not prohibit counties or municipalities from enacting and enforcing ordinances that regulate the location of adult oriented businesses. (Emphasis added.)

Subsection A is the quarter-mile requirement you referenced in your letter. However, you did not mention subsection C, which on its face is dispositive with respect to your office's authority to commence legal action against Tempe or its representatives. The express language of subsection C clearly prohibits the preemption of any municipal or county regulation that existed or later is enacted to regulate the location--through distance separation requirements--of adult oriented businesses. As noted above, Tempe already had a separation requirement prior to the amendment of A.R.S. § 13-1422 and it still does today. In fact, following the recognition that the state legislature appears, whether intentionally or through failed drafting of the legislation, to have precluded the amendment from applying to the City of Tempe, the Tempe City Council enacted its own amendment to its own distance separation requirement, extending the distance from 1000 feet to 1320.

The conclusion that Subsection C precludes the Subsection A distance separation requirement from applying to Tempe or any municipality or county that has its own separation requirement (or later enacts one) is further buttressed by the provisions contained in Subsection B of A.R.S. § 13-1422 and the express preemption language contained in Subsection D of A.R.S. § 13-1422 that refers to Subsection B. Subsection B regulates the hours of operation of an adult oriented business. Subsection D then states that counties and municipalities may enact and enforce regulations concerning the operating hours of certain adult oriented uses; however, it states that counties and municipalities may do so only "in a manner that is at least as restrictive as" the operation hours specified in subsection B.

Recall that Subsection C of A.R.S. § 13-1422 contains no limiting or preemptory language at all and instead allows a county or a municipality to enact and enforce its own distance separation requirements. If the legislature sought to have the new quarter-mile distance requirement apply to cities like Tempe, it could have included specific limiting language. However, it appears the legislature failed in its efforts, and instead enacted a revision to the statute that applies either only to unincorporated areas in counties and to cities that do not have adult oriented business distance separation requirements. Tempe, both as of the effective date of the 2006 amendments and after, had its own comprehensive adult oriented business regulations, which by the plain terms of A.R.S. § 13-1422 Tempe was free both to enact and enforce. Accordingly, any contemplated or actual enforcement action by your office against Tempe based on A.R.S. § 13-1422(A) would clearly constitute a "prohibition" restricting Tempe from enforcing its local ordinances, in direct contravention of A.R.S. § 13-1422(C). As a result, and as I think you will likely ultimately agree, your office is not authorized to commence legal action to ensure compliance with A.R.S. § 13-1422 against Tempe or its representatives.

I also want to clear up any misunderstanding you may have regarding the August 22, 2007 Order issued by Judge Martone. It should be noted that while the parties did in fact submit a proposed form of consent judgment for Judge Martone's consideration, once he expressed his reservations about signing such an order, the parties withdrew the request, signed a settlement agreement, and dismissed the action by stipulation pursuant to Rule 41(a)(1), FRCP. By the time Judge Martone issued his order, the matter had been dismissed by operation of Rule 41(a)(1) for nearly 2 weeks. Because the dismissal the parties completed required no judicial action, it appears that the District Court had no basis or jurisdiction on which to issue such an order.

Nonetheless, because this matter, from the beginning, was assigned to a federal magistrate judge for mediation, and because the parties worked diligently for several months in furtherance of mediation, the legal merits of the case were never briefed or

Timothy A. La Sota, Esq.  
September 14, 2007  
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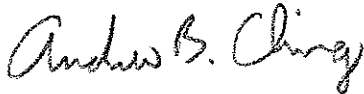
litigated in front of Judge Martone. That most likely explains Judge Martone's misunderstanding of the facts and legal issues in the case and his unsupported assertion that the settlement would mean Tempe is electing to "ignore state and local zoning laws", See the August 22, 2007 Order at p. 2. As I have already explained, the settlement is entirely consistent with—and likely required by—the City's and State's zoning laws at the time of the original application, among many other reasons.

Tempe has the authority to settle lawsuits in precisely the manner it chose to in this instance, and it did so mindful of the significant liability exposure to Tempe involved and mindful of the best interests of Tempe and its residents. It may not be a result that any policy maker likes, but it is one necessitated by the legal position in which Tempe found itself at the time, and recognizing that any legislative effort to change the result came too late and in a form that appears to have been drafted, whether or not intentionally, so that it does not apply to Tempe even if it had been timely enacted.

As part of the settlement, and under local and state law, Tempe also has the authority *and the obligation* under Tempe's ordinances and state and federal law, to determine in what manner the application of IBH will be processed in accordance with our local ordinances. A.R.S. § 13-1422(C) expressly permits exactly what Tempe is doing with respect to the permitting of Elite Cabaret. Based on this information, I request that you rescind by letter the legal action you threatened to take in your letter, and promptly notify me and my clients that your office will not bring any action against Tempe or its representatives based on A.R.S. § 13-1422.

I thank you in advance for your attention to this matter. Please feel free to contact me to discuss this matter further.

Sincerely yours,



Andrew B. Ching  
City Attorney

ABC/sv

cc: Mayor and City Council  
John Weston





COPY

## Maricopa County Attorney

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August 29, 2007

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Tempe, AZ 85280-5002

Mr. John Weston, Esq.  
Mr. G. Randall Garrou, Esq.  
Weston Garrou & DeWitt  
12121 Wilshire Blvd #900  
Los Angeles, CA 90025-1176

Re: Restrictions in A.R.S. § 13-1422 on locations of adult-oriented businesses

Dear Messrs. Ching, Weston and Garrou:

I write to you in your capacity as the attorneys of record for the City of Tempe and Idaho Business Holdings, LLC in the matter of Idaho Business Holdings, LLC v. City of Tempe, CV-06-2137-PHX-FJM.

Media reports have indicated that the City of Tempe, in response to this federal lawsuit filed by Idaho Business Holdings, has agreed to grant whatever permits are necessary to Idaho Business Holdings to open and operate Elite Cabaret, an "adult-oriented business" under Arizona Revised Statutes § 13-1422. ("Tempe Settlement May Bring City's First Strip Club," The Arizona Republic, August 24, 2007; "Tempe's First Strip Club To Open After Reaching Accord," East Valley Tribune, August 25, 2007, both attached). This apparently is to occur despite the fact that state law prohibits adult-oriented businesses from locating within one-quarter mile of a public recreational facility, and Elite Cabaret, which would be located at 910 North McClintock Drive in Tempe, apparently falls within a quarter-mile of a public recreation facility.

Passed by the legislature and signed into law by the governor in 2006, A.R.S. § 13-1422 remains in full force and effect in Arizona. This office has learned that U.S. District Judge Fred Martone recently rejected an apparent attempt by the City of Tempe and Idaho Business Holdings to use a consent decree as a vehicle to have the federal courts declare this statute unconstitutional. In rejecting this attempt to have the law struck down in as part of a confidential settlement agreement, Judge Martone stated, "The parties' proposed consent decree would mislead the public into believing a federal court required the City to allow plaintiff to run its business in

August 29, 2007

violation of state law, when, in fact, the City is choosing to ignore state law." Idaho Business Holdings, LLC v. City of Tempe, CV-06-2137-PHX-FJM (order attached).

Given these developments and the findings of the federal court, this correspondence is sent as a courtesy to place you and your clients on notice regarding potential legal action by this office. State law mandates that this office commence a legal action to ensure compliance with A.R.S. § 13-1422. This statute provides in relevant part:

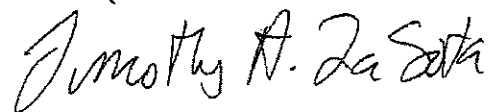
If there is reason to believe that a violation of subsection A of this section is being committed in any county or city, the county attorney of the county shall, or a citizen of this state who resides in the county or city in the citizen's own name may, maintain an action to abate and prevent the violation and to enjoin perpetually any person who is committing the violation and the owner, lessee or agent of the building or place in or on which the violation is occurring from directly or indirectly committing or permitting the violation.

A.R.S. § 13-1422(E).

Locating an adult-oriented business in a prohibited area is a class 1 misdemeanor for each day that the violation occurs. A.R.S. § 13-3422(F).

It is the hope of this office that the parties will take appropriate steps to come into compliance with state law. Further legal action may be taken without additional notice to the parties. Please feel free to contact me if you have any questions regarding this matter.

Sincerely,



Timothy A. La Sota  
Special Assistant County Attorney

cc: The Honorable Hugh Hallman, Mayor, City of Tempe  
The Honorable Hut Hutson, Vice Mayor, City of Tempe  
The Honorable Ben Arredondo, Councilmember, City of Tempe  
The Honorable Barbara Carter, Councilmember, City of Tempe  
The Honorable Shana Ellis, Councilmember, City of Tempe  
The Honorable Mark Mitchell, Councilmember, City of Tempe  
The Honorable Onnie Shekerjian, Councilmember, City of Tempe

Enclosure



## Tempe settlement may bring city's first strip club

**Katie Nelson**  
The Arizona Republic  
Aug. 24, 2007 01:34 PM

Tempe is slated to get its first strip club, Elite Cabaret, but the battle might not be over.

The lengthy lawsuit between the city and the business group that wants to open the adult club has been settled; the case was dismissed from U.S. District Court in Phoenix on Wednesday.

The settlement will allow Elite to open in the originally proposed location, off McClintock Drive and Loop 202, in north Tempe near the new Tempe Marketplace retail center. But Tempe's mayor says he will fight to get the settlement tossed out and have the club shut down.

Community outcry came from neighbors and city officials when Idaho Business Holdings announced in March 2005 plans to open Elite Cabaret. Tempe has strip clubs near its borders - in county islands, in Guadalupe and Scottsdale - but none actually inside the city.

Complex city and state zoning laws almost made it impossible for Elite Cabaret to open. Tempe and the state have rules that keep adult businesses from opening within a quarter mile of a park, school and many other public amenities. But Elite Cabaret backers filed a federal lawsuit in September 2006, challenging the laws. City attorneys have been defending the city in and out of court since then. Mediation was successfully closed on Aug. 9 when Jeff Minor, from the Cabaret, and Tempe City Attorney Andrew Ching penned an agreement that allows the club to open. Each party will pay their own attorney's fees, according to the document.

"Throughout this process we have been trying to protect our community from the potential degradation of having a strip club, and from the threat that we would be liable for at least \$5 million in damages and probably more," said Mayor Hugh Hallman.

The agreement stated Tempe likely would have lost the lawsuit. Elite Cabaret backers have said they were losing \$500,000 every month the club was kept from opening, according to Hallman.

Neither Elite Cabaret attorneys nor Jeff Minor returned calls for comment.

After the agreement was signed, city officials and Elite Cabaret asked the judge to toss out the court case. They also asked the judge to seal the settlement so it would be kept private.

U.S. District Judge Frederick J. Martone responded to the seal request on Wednesday, in the process of allowing the case to be dropped.

His issued a stinging response, announcing grave disapproval of the settlement agreement and calling it "utterly unacceptable."

Martone's three page document states that in signing the settlement agreement, Tempe was "choosing to ignore state law" by agreeing to let the club open despite being in violation of the distance regulations.

"If the City of Tempe elects to ignore state and local zoning laws, it will do so at its own peril, without the sanction of this court," Martone wrote.

Martone also questioned the motives behind keeping the settlement agreement private.

"This is directly contrary to the public interest in knowing what its publicly elected officials are doing . . ." he wrote.

Despite the city having signed the agreement, Hallman says he will now push for Tempe to try and have the settlement agreement thrown out.

"I am never going to be party to a settlement agreement that violates state law," Hallman said. "If the judge is right, we should be able to get the settlement thrown out as void because we can't violate state law nor should we."

The council will consider that proposition in the near future.

In the meantime, the club now can move forward with plans to open.

#### Post a Comment

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- [rhinobp](#)
- Posted: Aug 24, 2007 at 2:21 PM
- [Report abuse](#)

That's to bad. More trash in the valley.

- [carey984 | Profile](#)
- Posted: Aug 24, 2007 at 2:40 PM
- [Report abuse](#)

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mayor will be the first one in there,just like the hooters in chandler

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## Tempe's first strip club to open after reaching accord

By GARIN GROFF TRIBUNE

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A topless club has won a battle to open what will become Tempe's first strip joint.

The club's victory came after it asked a federal court to overturn a state law that regulates adult businesses — and after it claimed Tempe improperly denied its right to open.

The club, Elite Cabaret, filed for a license in November 2006, but Tempe told the business it could not open because the city requires adult businesses to be at least 1,000 feet from a park.

The lot, on McClintock Drive north of Loop 202, was too close to a portion of the Indian Bend Wash, the city had ruled.

The club tried breaking off the back part of its lot to meet the requirement. But before the city evaluated an application to split the lot, the Arizona Legislature passed a bill requiring adult businesses to be at least 1,320 feet, or a quarter mile, from parks, schools, churches, neighborhoods and several other types of developments.

Elite Cabaret's attorneys argued the city dragged its feet while waiting for the more restrictive law and said the club was losing up to \$500,000 a month by remaining closed. They also tried to overturn the new state law.

Under a settlement with the strip club, the city agreed to use the old 1,000-foot distance and grant whatever permits the club needs to operate, City Attorney Andrew Ching said Friday.

The club is planning to open at 910 N. McClintock Drive.

One issue still remains unresolved, however. After the agreement was signed, a federal judge issued a ruling this week that raised legal questions about some elements of the settlement.

But Ching questioned whether the judge had the authority to strike down any parts of the deal after both parties agreed to it.

The City Council will discuss the settlement at a closed-door session Monday.